No. 15,947

In the United States Court of Appeals for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

LAUNDRY, LINEN SUPPLY & DRY CLEANING DRIVERS LOCAL NO. 928, Affiliated With INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AND LOCAL NO. 52, LAUNDRY & DRY CLEANING WORKERS INTERNATIONAL, AFL-CIO, RESPONDENTS

On Petition for Enforcement of An Order of the National Labor Relations Board

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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AUTHORITIES CITED

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JURISDICTION

This case is before the Court upon the petition of the National Labor Relations Board pursuant to Section 10 (e) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Sec. 151, *et seq.*), for enforcement of its order issued against respondents on September 25, 1957. The Board's decision

and order (R. 19-28)[1] are reported at 118 NLRB 1435. This Court has jurisdiction of the proceedings, the unfair labor practices having occurred in Long Beach, California.

STATEMENT OF THE CASE

I. The Board's Findings of Fact

Briefly, the Board found that respondents, by picketing customers of Southern Service Company, Ltd. (herein called Southern), with an object of forcing the customers to cease doing business with Southern, induced and encouraged the employees of these customers, and employees of suppliers thereof, to engage in a strike or concerted refusal to work, in violation of Section 8 (b) (4) (A) of the Act. The facts upon which these findings are based, virtually undisputed, are summarized below:

Southern,[2] a California Corporation with main offices in Pomona, California, operates approximately thirty laundries throughout California, including several in Long Beach called Long Beach Linen Supply (R. 12; 33).

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[1] References designated "R." are to the printed record. References preceding a semicolon are to the Board's findings; succeeding references are to the supporting evidence. Relevant portions of the Act appear in the Appendix, *infra*, p. 21.

[2] In 1955 Southern purchased and caused to be shipped to it from out of state linens, laundry, and dry cleaning supplies and equipment valued between $500,000 and $600,000 (R. 12-13; 32-33). The Board's jurisdiction is clear. *Capital Service, Inc.* v. *N.L.R.B.*, 204 F. 2d 848, 851 (C.A. 9), affirmed 347 U.S. 501; *N.L.R.B.* v. *Local 1976*, 241 F.2d 147, 151-153 (C.A. 9), affirmed June 16, 1958.

For a number of years the respondents have tried unsuccessfully to organize the employees of Southern, and at the time of the picketing described below, Southern was the only major non-union laundry remaining in Southern California (R. 13, 20; 35-37, 39-42, 46-48, 100). Although the plants of Long Beach Linen Supply had not been picketed in recent years, the Company was still the main target of the respondents' organizational efforts (R. 20; 48). Both respondents at the time material here were members of a group styled the "Southern Service Organizing Committee" whose sole purpose is apparent from its name (R. 39-42).

Respondents, having failed in their previous attempts to organize Southern's employees by appealing directly to the employees themselves, sought to accomplish their goal by other means. Many of Southern's customers were retail establishments such as restaurants, barber shops, beauty salons, and hotels. A union representative approached these establishments and asked them to cease doing business with Southern and to change to a union linen service. The Unions warned Southern's customers that if they continued to use Southern linens a picket line would be placed in front of their places of business. (R. 14, 20; 46, 52-53, 70-71, 95.)

Between August 13 and 18, 1956, while the State AFL-CIO convention was being held in Long Beach, the Unions sent pickets to patrol outside various Long Beach restaurants. The sign carried by these pickets read (R. 14, 20; 30):

NOTICE TO THE PUBLIC

THIS ESTABLISHMENT'S LINENS ARE BEING PROCESSED BY A NON-UNION LAUNDRY [3]

The picketing stopped after August 18, but was resumed at a single restaurant, Madsen's, on October 8, 1956, and was continuing there at the time of the hearing (R. 16; 50, 53-54, 71).

Although the picketing was largely confined to meal hours, the Unions on the first day of the picketing stationed pickets at Grisinger's Drive-in restaurants for the entire day (R. 71-72). Deliveries to the restaurants are made during meal times, as well as at other times, so that some deliveries were made or were scheduled while the picketing was taking place (R. 3; 54-56, 68-69). At some of the restaurants the Unions picketed only entrances used solely by patrons of the restaurant and did not picket entrances used by employees and deliverymen (R. 14-15). At Madsen's and two Grisinger Drive-ins, however, the picketing was conducted in front of entrances which were used by deliverymen and restaurant employees, as well as by customers (R. 14; 49-50, 55, 63-64). The pickets were not instructed to tell restaurant employees and deliverymen that they were free to

[3] The words "Non-Union Laundry" dominated the sign, and were the only words easily read by the casual observer. See Exhibit K, which the printer inadvertently omitted from the printed record. On December 5, 1956, after this litigation commenced, the first line of the picket sign was changed to read "Notice to Patrons," but apparently no change was made in the size of the lettering (R. 20, n. 1; 7, 30).

cross the picket lines, but on the contrary were instructed not to answer any inquiries and to hand the questioner a card containing the Unions' telephone number (R. 96-98). The picketing at Madsen's and Grisinger's, which the Board found unlawful, is described in further detail in the following pages.

1. *The picketing at Madsen's restaurant*

Madsen's restaurant, located on the corner of American Avenue and Ocean Boulevard in Long Beach, California, employs about 20 people. The restaurant's entrance is located at the corner of the building facing the street intersection, and is used by employees and deliverymen, as well as customers. Another door, facing American Avenue, is used only for trash removal. Also on American Avenue, a short distance north of the main entrance, is a sidewalk delivery chute. This chute is used for large deliveries and is covered by steel doors when not in use. (R. 49-50.)

Late in July 1956, John Leggieri, business representative for the respondent Laundry Drivers' Union, asked Louis Madsen, owner of the restaurant, to stop using Southern linens and to change to a union laundry or subject his restaurant to being picketed. Madsen, who had been using Southern linen for approximately four years, refused and advised Leggieri that he would "stand the consequences." (R. 14, 20; 52-53.)

As noted above, the Unions picketed Madsen's during the week of the convention, and resumed picketing in October. The pickets patrolled from one end of

the restaurant around the corner to the other end, passing over the delivery chute and in front of the sole entrance (R. 14; 50-51, 53-54, 56). Because of the restaurant's large plate glass windows, the pickets were almost continually visible to restaurant employees working inside (R. 51, 55).

On the first day of picketing, Harley Schaefer, a driver for Carnation Company, was preparing to make a delivery at Madsen's when he saw the pickets coming around the corner of the restaurant. As he unloaded supplies from his truck, a deliveryman employed by a bakery approached and asked if Schaefer was going to deliver the supplies. When Schaefer stated he would, the deliveryman replied, "Well, you must have more hundred dollars than I do." Schaefer then approached one of the pickets and asked if it was all right to make the delivery. The picket answered that "he didn't know" and that "he had been hired to walk the picket line." Schaefer left without making the delivery. Later that day, Carnation delivered the goods in a private automobile. (R. 15; 85-87, 57-59.)

Schaefer was a member of a Teamster local and stated at the hearing that he had not received prior notice that a picket line would be placed at Madsen's. He stated further, "As far as I know, I am not supposed to cross a picket line" (R. 25; 86). After the incident above, Schaefer inquired at his union office if it was all right to make the deliveries. He was told by someone there, "not to go across the line." Later, his employer advised him that it was all right to deliver, "if I figured that I should." On the strength

of this, he made subsequent deliveries to the restaurant. (R. 15; 86-87).

Also on the first day of the picketing, the R. C. Griffith Company, a supplier, called the restaurant and informed Madsen that because of the pickets Griffith could not make deliveries, as its drivers would be subject to a hundred dollar fine (R. 23; 58). Douglas Brothers, another supplier, also called Madsen and said that their drivers were union and did not want to cross the picket line (R. 23; 54-55). After these suppliers checked with their employees' unions, deliveries were resumed (R. 58-59).

2. *Picketing at the Grisinger's Drive-in restaurants*

Grisinger's Drive-in on East 4th Street is located in the middle of the block. On one side is a parking area which extends around the rear of the building. A driveway provides access from the street. On the other side is an alleyway, approximately ten feet wide, used as an exit from the rear parking area. Restaurant employees and customers use the parking area, and deliverymen drive into the parking area to make their deliveries through a rear door. Pickets patrolled across the front of the restaurant and across the front of both driveways. (R. 64-67.)

Allen Russell, a truck driver for Burr Brothers Meat Company, first noticed the pickets as he was leaving through the exit driveway after completing a delivery at Grisinger's on August 13. On subsequent deliveries, to avoid the picket line, he used a back alley adjacent to the restaurant parking lot. From there he signalled the cook who would come to

the truck to get the meat. Russell also testified that he had not received any prior warning of the picket line, and used the above method of delivery to avoid any possible fine for crossing it. (R. 16; 76-77, 81-84.)

Grisinger's Atlantic Avenue restaurant is located at the intersection of Atlantic Avenue and San Antonio Street. One side of the restaurant faces the street; the other faces a large parking area used for drive-in customers. Restaurant employees and deliverymen also use the parking area in order to get to the service door located on the parking area side of the restaurant. Wide driveways provide access to the streets. Pickets patrolled from one edge of the property to the other, thus crossing both driveways as well as the front of the restaurant itself. (R. 61-64.)

Several suppliers phoned John Grisinger, the owner of the restaurants, to tell him that they could not deliver because of the pickets (R. 68-69). On one occasion Grisinger had to pick up needed supplies in his own car (R. 69). Edward Graham, an employee of Grisinger's Fourth Street restaurant, testified that drivers of other suppliers were also deterred by the sight of the picket line, left without making delivery, and checked with their unions before returning to deliver their orders (R. 16; Tr. 141).[4]

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[4] At Tr. 141, inadvertently omitted from the printed record, Graham testified on cross-examination:

> A. Let's see, the bread man and the milk company didn't deliver the first time. They went away and then they went and called their union to find out if it was all

II. The Board's Conclusions and Order

Upon the foregoing facts the Board found that, by picketing entrances used by deliverymen and restaurant employees as well as restaurant customers, the Unions induced or encouraged not only the customers but also employees of the restaurants and of the restaurants' suppliers not to cross the picket line. The Board further found that such a response by the employees constituted a concerted refusal to work within the meaning of Section 8 (b) (4) (A) of the Act. As the object of the picketing was proscribed by Section 8 (b) (4) (A)—namely, forcing the restaurants to stop doing business with Southern—the Board concluded that by inducing or encouraging such action by the employees, the Unions violated Section 8 (b) (4) (A) (R. 21-24).[5]

Accordingly, the Board ordered respondents to cease and desist from engaging in the unfair labor practices found and to post appropriate notices (R. 24-28).

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right to deliver, and then they came back and made the delivery, but they were late on their delivery.

Q. And those drivers told you, did they not, on checking with their union, they found it was all right to go through the picket line?

A. Yes.

[5] The Board's application for injunctive relief against respondents, based on the foregoing facts, was denied by District Judge Byrne, who found there was no evidence that the picketing affected any employees. For the reasons indicated in the Argument, we respectfuly submit that the district court erred.

ARGUMENT

Introduction

This case involves the so-called "secondary boycott" provisions of the Act by which Congress sought the objective "of shielding unoffending employers and others from pressures in controversies not their own." *N.L.R.B.* v. *Denver Building Trades Council*, 341 U.S. 675, 692. The respondents here were engaged in a "secondary boycott." In other words, their controversy was with Southern, but they brought pressure on unoffending employers (the restaurants), attempting to disrupt the restaurants' business unless the restaurants ceased doing business with Southern. Respondents contend, however, that their secondary boycott did not violate the letter of the law. They point out that in legislating against secondary boycotts Congress outlawed only appeals to employees and did not proscribe appeals to customers not to cross a picket line. The Board found on the record in this case, however, that respondents, by picketing entrances used not only by customers but also by employees,[6] necessarily appealed not to the customers alone but also to employees of the restaurants and to employees of suppliers delivering goods to the restaurants. In the following pages we shall show that the Board's analysis of the situation is correct, and that its finding is supported by substantial evidence on the record as a whole.

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[6] The entrances in question were used by employees of the restaurants and by employees delivering goods to the restaurant. Appeals to either class of employees in the course of a secondary boycott are proscribed by Section 8 (b) (4) (A) of the Act.

THE BOARD PROPERLY HELD ON THE RECORD IN THIS CASE THAT THE UNIONS, BY ENGAGING IN SECONDARY PICKETING AT ENTRANCES USED BY EMPLOYEES AS WELL AS BY CUSTOMERS, INDUCED OR ENCOURAGED EMPLOYEES NOT TO CROSS THE PICKET LINE, THEREBY VIOLATING SECTION 8 (b) (4) (A)

Respondents' basic purpose was to unionize Southern. The technique involved was simple and traditional. Having failed in their direct approach to Southern and its employees, respondents sought to attack Southern by disrupting the business of its customers, the restaurants. Respondents' plan was that the restaurants, to rid themselves of the pickets, would cease doing business with Southern unless Southern came to terms with the Union.

The keystone to this campaign, of course, is the disruption of the restaurants' business by placing pickets at the restaurants. The Taft-Hartley Act aside, the Unions are not concerned with how this disruption takes place. That is to say, the Unions' purpose will be achieved if employees of the restaurants' suppliers refuse to deliver supplies through the picket line, or if customers who would otherwise patronize the restaurants take their trade elsewhere. When a secondary picket line is placed at an entrance used alike by customers, employees, and deliverymen, its normal appeal (and, at least prior to the Taft-Hartley Act, its intended appeal) is to all alike—do not cross the picket line, and thereby help us to disrupt this business so that its owner will bring pressure on the employer with whom we have a dispute.

That such a picket line ordinarily conveys this message to employees who approach it is an elemen-

tary fact of business and industrial life. As this Court stated in *Printing Specialties Union* v. *N.L.R.B.*, 171 F. 2d 331, 334, petition for certiorari dismissed, 336 U.S. 949:

> The reluctance of workers to cross a picket line is notorious. To them the presence of the line implies a promise that if they respond by refusing to cross it, the workers making the appeal will in turn cooperate if need arises. The converse, likewise, is implicit. "Respect our picket line and we will respect yours."

The understanding of organized labor as to the meaning of a picket line was well expressed by the *Report of the General Executive Board to the 27th Convention, International Ladies' Garment Workers Union*, Atlantic City, N. J., May 23—June 1, 1950, pp. 691-692:

> Your committee is keenly aware of the great role that respect for a picket line has placed in the history of the labor movement. It is a tradition that emerged with the very first beginnings of labor organization and that has done much to foster the spirit of labor solidarity, which alone gives trade unionism whatever power it possesses. Respect for a picket line still remains a sacred and inviolable sentiment among the best of the many millions of men and women who make up the army of organized labor. It constitutes a weapon and a sanction that labor can never outgrow since it can never outgrow the idea and practice of labor solidarity that gives it its life.

The Taft-Hartley Act, as we have seen, drew a line between secondary picketing which appeals to patrons of the picketed premises, and secondary picketing

which appeals to employees. But the Act did not operate to remove from the consciousness of organized labor this "inviolable sentiment" to respect a picket line. When the Unions in this case placed a picket line at entrances used by employees as well as patrons, the message automatically conveyed to the employees was "do not cross this picket line." Even assuming, *arguendo*, that the picketing Unions were aiming also at restaurant patrons, the fact remains that the presence of a picket at an entrance used by employees constitutes a strong form of inducement or encouragement to those employees to refuse to enter the picketed premises.

Moreover, the picket lines in this case did nothing to dispel this normal appeal to employees. Although respondents proclaim that this was mere customer picketing, the signs made no appeal, and suggested no course of action, limited to potential customers. In fact, there was no indication from the signs that employees were *not* being encouraged to strike. Cf. *N.L.R.B.* v. *Associated Musicians*, 226 F. 2d 900, 904 (C.A. 2), certiorari denied, 351 U.S. 962; *Stover Steel Service* v. *N.L.R.B.*, 219 F. 2d 879, 880 (C.A. 4). In all outward appearance the picketing here was indistinguishable from a conventional union picket line which has as its purpose a broad appeal to *all* who approach—customers and employees—to assist the picketing union by not crossing the picket lines. That employees as well as customers might respond to the appeal of such picketing is more than merely conjectural.

Attesting to the correctness of the Board's finding

in this case is the effect such picketing actually had on employees. Thus, Driver Russell changed his method of delivery to avoid crossing the picket line. Driver Schaefer, after trying in vain to elicit from the picket the reason for the picketing, returned his merchandise to the truck and refused to make the delivery rather than chance crossing the picket line. Moreover, another deliveryman warned Russell of the possibility of a union fine for crossing the line. Other incidents of deliveries skipped because of the picket line were related by Edward Graham, a cook at Grisinger's Fourth Street Restaurant. Further indicating the effect of the picketing on neutral employees was the refusal by Douglas Brothers to make further deliveries to Madsen's restaurant on the ground that its drivers were union members who did not want to cross the picket line.

Insofar as these and other employees respected the picket line, the purpose of the picketing—the disruption of the restaurants' business to force the restaurants to bring pressure on Southern—was advanced. To be sure, where employees who refused to cross the picket line made specific inquiry of the pickets as to whether the picketing was aimed at them, the pickets, under instructions from the Unions, refrained from answering in any way. Instead, the inquirer was handed a card bearing the telephone number of Mr. Leggieri, the Unions' representative in charge of the picketing. The Unions—mindful of the statutory restriction—testified that anyone calling that number would be informed that the picketing was merely a consumer appeal (R. 96-98). The record reveals,

however, that no one identified as an employee ever took the trouble to call the number listed on the card (R. 98). Employees faced with the picket lines either called their own unions or employers or, as indicated above, merely refrained from crossing the lines. This, we submit, falls far short of the Unions' statutory duty to refrain from inducing or encouraging employees to respect the secondary picket line.

We submit, in short, that the "foreseeable consequence" [7] of picketing at an entrance used in part by employees is that the employees will respect the picket line. No doubt another consequence under these circumstances is that customers will also respect the picket line. But the legality of the second consequence does not excuse the illegality of the first. Cf. Judge Learned Hand's observation for the court in *N.L.R.B.* v. *Remington Rand, Inc.*, 94 F. 2d 862, 872 (C.A. 2), certiorari denied, 304 U.S. 576, that "it rested upon the tortfeasor to disentangle the consequences for which it was chargeable from those from which it was immune." [8]

The foregoing considerations find ample support in the court decisions construing the secondary boycott provisions of the Act with respect to so-called

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[7] *Radio Officers' Union* v. *N.L.R.B.*, 347 U.S. 17, 44-46.

[8] The instant case is to be distinguished from *Capital Service, Inc.* v. *N.L.R.B.*, 204 F. 2d 848 (C.A. 9), affirmed 347 U.S. 501, where the picketing of customer entrances was considered by the Court to be violative of Section 8 (b) (1). That picketing was not held violative of Section 8(b)(4) because in that case there was no evidence that picketing at those entrances had any impact on the employees or that employees used those entrances. See 100 NLRB at 1093.

"consumer picketing." Thus in *N.L.R.B.* v. *Business Mach. & Office Appliance, etc.*, 228 F. 2d 553, 560 (C.A. 2), certiorari denied, 351 U.S. 962, the court, although holding the "customer" picketing lawful, expressly noted that "it was not shown that the picketing had any tendency to induce the employees to strike or cease performing services," and that the office employees who approached the picket lines in that case (unlike the Long Beach deliverymen in this case) were not unionized. In *N.L.R.B.* v. *Associated Musicians*, 226 F. 2d 900, 904-905 (C.A. 2), certiorari denied, 351 U.S. 962, the court held the picketing unlawful even though, as here, it was timed to coincide with the arrival of patrons rather than employees, and even though the picketing did not result in an actual strike or concerted refusal to work. In *Brewery and Beverage Drivers* v. *N.L.R.B.*, 220 F. 2d 380 (C.A. D.C.), the court approved the Board's finding of violation where the union, as here, picketed in front of retail store entrances used by customers and deliverymen alike, carrying signs far more specifically directed to the consumer than those in the instant case. 107 NLRB 299, 301, 304.[9]

The decisions of this and other courts construing the secondary boycott provisions in so-called "com-

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[9] The signs in that case read (107 NLRB at 301):

> Friends
> When you go into this store do not ask for
> Coca Cola
>
> It is not delivered by members of Brewery and Beverage Workers Union No. 67, thus tending to decrease the earning oportunities of its members. If you desire a Cola drink, please select some other brand * * *.

mon situs" cases likewise demonstrate the validity of the Board's holding here. In the "common situs" cases pickets are stationed at premises where both the employer with whom the Union has a labor dispute (the primary employer) and other employers are doing business. The issue in those cases is whether the object of the picketing is defined with sufficient clarity to make it appear that its impact is on the primary employer (and hence lawful) and not on employees of the secondary employer (which would be unlawful). In the instant case, of course, the picketing is purely "secondary," but the issue is similar: Was it conducted so as to limit its effect to customers and not to reach employees? In determining whether the picketing was sufficiently limited in the "common situs" cases, the courts have recognized that the Board may properly consider "the failure of the Union to inform striking employees of neutral employers that the picket line was not aimed at those employers" (*Truck Drivers Union* v. *N.L.R.B.*, 249 F. 2d 512, 514-515 (C.A.D.C.)), or (to quote this Court) the failure of the union to "limit" or "minimize the impact of its picketing" (*Retail Clerks Union* v. *N.L.R.B.*, 249 F. 2d 591, 598).

In short, the "common situs" cases hold that where a union's picketing may have both primary and secondary impact, the union is under a duty to limit the effect of its picketing. This analysis must apply *a fortiori* to the instant case where the picketing is entirely of a secondary nature. Where a union deliberately engaged in a secondary boycott, and installs a picket line which by its very presence appeals to em-

ployees as well as customers, the union must take affirmative steps to limit the impact of its picketing. In this case not only were the pickets and picket signs unrevealing (*supra*, pp. 13-15) but, in addition, the Unions took no steps to limit the appeal of the picket line. They distributed no literature advising employees that they were free to cross the picket line.[10] They issued no instructions to pickets that the picketing was directed only at customers. They did not even authorize pickets to answer questions from employees who inquired whether they would be penalized if they passed through the lines. Instead the Unions placed the pickets and let the picket line have its normal and forseeable consequences. Only when employees took the pains of making a special telephone call were they advised that they need not respect the picket line.[11]

It may well be that the Unions determined to picket at meal times and during the period of the labor convention so that the picketing would have the greatest possible impact upon the restaurants' patrons. Actually, the presence of the convention suggests that other means were readily available to accomplish the Unions' legitimate objective of appealing to custom-

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[10] Cf. *N.L.R.B.* v. *General Drivers, etc.*, 225 F. 2d 205, 207-208, 211 (C.A. 5), certiorari denied, 350 U.S. 914, where the union added the notation "see our pamphlet" to its picket signs and distributed handbills to employees expressly stating the purpose of its picketing.

[11] Any other response, of course, would have constituted that "direct evidence of a purpose to violate the statute" which is so "rarely obtainable." *N.L.R.B.* v. *Int'l Union of Operating Engineers*, 216 F. 2d 161, 164 (C.A. 8).

ers. The Unions could have distributed handbills and otherwise publicized their boycott to the convention delegates.[12] But the mere fact that the picketing may have had a lawful objective or result will not save it from illegality if one of its forseeable consequences was unlawful.

A picket line, by its very presence at a door used alike by customers and employees, induces or encourages a response from both customers and employees. The response it normally induces is not a telephone call to the office of the union doing the picketing, but a simple refusal to cross the picket line. Where, as here, the picketing is part of a secondary boycott, inducing such a response from employees is unlawful.[13]

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[12] The Unions did distribute thousands of window cards to firms using linen services and notified visiting labor delegates to patronize only those establishments with such a card (R. 35-36).

[13] The Unions suggest that the appeal of the picket line is to individuals as they approach it, and that the picketing therefore did not induce or encourage a "concerted refusal" within the meaning of the Act, citing *N.L.R.B.* v. *International Rice Milling Co.*, 341 U.S. 665, 670-671. If this argument were valid, virtually all secondary picketing would be legitimized even at employee entrances, because it appeals to each individual in turn as he approaches the picket line. The basic purpose of a picket line is to appeal to labor as a class (*supra*, p. 12). The employees who respect a picket line are acting in concert with the pickets and with each other. The *Rice Milling* case concerned lawful primary picketing. As the court stated in *Amalgamated Meat Cutters* v. *N.L.R.B.*, 237 F. 2d 20, 24 (C.A.D.C.), certiorari denied, 352 U.S. 1015:

> It would be artificial to say that the Union did not encourage a unity of effort, and therefore, concerted

We submit that the Unions in this case did not take sufficient steps "to disentangle [that] consequence for which [they are] chargeable from those from which [they are] immune" (*Remington Rand, supra*, p. 15).

CONCLUSION

For the foregoing reasons, we respectfully submit that a decree should be entered enforcing the Board's order in full.

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JULY 1958.

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action, on the part of the employees. We think this type of inducement is designed to secure concerted conduct and does not fall within the scope of the *Rice Milling* decision (citing authorities).

APPENDIX

The relevant provision of the National Labor Relations Act, as amended (61 Stat. 136, 65 Stat. 601, 29 U.S.C., Secs. 151, *et seq.*), is as follows:

Unfair Labor Practices

* * * *

Sec. 8(b). It shall be an unfair labor practice for a labor organization or its agents—

* * * *

(4) To engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is:

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; . . .

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